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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-556 (Sub-No. 2X)

RAILROAD VENTURES, INC. — ABANDONMENT EXEMPTION — BETWEEN YOUNGSTOWN, OH, AND DARLINGTON, PA, IN MAHONING AND COLUMBIANA COUNTIES, OH, AND BEAVER COUNTY, PA

STB Finance Docket No. 33385[1]

RAILROAD VENTURES, INC. — ACQUISITION AND OPERATION EXEMPTION — YOUNGSTOWN & SOUTHERN RAILROAD COMPANY

Decided: November 2, 2000

By decision served on October 4, 2000 (October 2000 Decision), we modified the terms and adjusted the purchase price[2] for the forced sale, under our offer of financial assistance (OFA) procedures at 49 U.S.C. 10904 and 49 CFR 1152.27, of a line of railroad owned by Railroad Ventures, Inc. (RVI), to Columbiana County Port Authority (CCPA).[3] RVI has filed (1) a petition for a stay pending judicial review of the October 2000 Decision, and (2) a motion for an order vacating the postponement of its abandonment exemption,[4] in order to allow the exemption to become effective. CCPA and the Central Columbiana & Pennsylvania Railway, Inc. (CCPR),[5] jointly replied in opposition to the stay petition and asked for permission to exceed the page

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] We set the original terms and conditions in a decision served on January 7, 2000 (January 2000 Decision).

[3] CCPA is a quasi-public agency established by the Board of County Commissioners of Columbiana County, OH, to promote economic development within the county.

[4] A decision served on November 12, 1999 (November 1999 Decision), postponed the effective date of the exemption authorizing abandonment of the line to permit the OFA process to proceed.

[5] Upon consummation of the purchase, CCPR will operate the line as a common carrier by railroad.

limitation[6] for their reply. In this decision, we deny RVI's petition for stay and its motion to vacate, and we grant CCPA's request for a waiver of the page limitation.

PERTINENT BACKGROUND

RVI purchased this rail line from the Youngstown & Southern Railway (Y&S) in November 1996 and immediately cancelled the lease under which the Ohio & Pennsylvania Railroad Company (O&P) had been providing rail service on the line. RVI's action ended rail service to several shippers on the line.

Because RVI had not obtained the Board's authority to buy the line from Y&S,[7] it retroactively sought that authority in 1997. We granted purchase authority (by exemption from the application requirement) only after RVI had acknowledged in writing that it bought the line "for the purpose of conducting rail freight common carrier operations on the former Y&S line." See October 2000 Decision at 3.[8]

A few shipments occurred on the line in 1997 under a restored lease between RVI and O&P, but shortly thereafter O&P embargoed[9] the line because of washouts. Although the embargo lapsed, RVI continued to make it impossible for any railroad to provide service over the line, and thus, no shipments have occurred on the line since that time.[10]

In 1999, RVI filed a request for exemption authority to abandon the rail line, and we granted the exemption in September of that year.[11] Acting pursuant to the OFA procedures,

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[6] There is a 10-page limitation on petitions for stay and replies to petitions imposed by 49 CFR 1115.5(c). RVI's petition for a stay also exceeded that limit.

[7] A noncarrier (such as RVI) that seeks to purchase and operate a rail line must obtain authorization from the Board under either 49 U.S.C. 10901 (application for approval) or 49 U.S.C. 10502 (request for exemption from the application requirement).

[8] The October 2000 Decision is attached as Exhibit A to RVI's petition for stay. References to the exhibits attached to the petition for stay will be to "Pet. Exh. [Letter]."

[9] An embargo is a temporary cessation of rail service when a disability exists that prevents a rail carrier from providing service to shippers. Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 325 (1981) (Kalo Brick).

[10] We misstated in the October 2000 Decision (at 8 n.24) that the formal embargo of this line ended on December 17, 1996. The correct date is December 17, 1997.

[11] Abandonment authority permanently relieves the line's owner of the legal obligation to (continued...)

which are designed to allow the purchase of rail lines to provide continued rail service, CCPA submitted an offer to purchase the line. Under the statutory provisions governing OFAs, if the parties cannot agree to terms, a party may ask the Board to set the purchase price, which may not be "below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services)[.]" 49 U.S.C. 10904(f)(1)(B). The Board's decision is binding on both parties, except that the party offering to buy the line may withdraw its offer within 10 days of the Board's decision. 49 U.S.C. 10904(f)(2). Thus, an offeror may walk away from the deal, but a seller may not.

When the parties did not agree to terms, CCPA asked the Board to set the terms of sale. In the January 2000 Decision, we set the purchase price at $1,080,560 and the closing date of the transaction for April 6, 1999. We ordered CCPA, within 10 days, to accept or reject the terms we had set. January 2000 Decision at 11, ¶4. CCPA promptly notified us and RVI that it accepted the terms and conditions and would purchase the line. Pet. Exh. D.

RVI objected that CCPA's acceptance was conditional, pointing to language that CCPA had accepted the terms "with the understanding . . . that it will be receiving a fee simple estate in the subject property free and clear of any reservations, liens, encumbrances, licenses, leases, easements or restrictions, except those which were in existence prior to November 8, 1999, and considered by Mr. Rossi in the appraisal which was adopted by the Board[.]" Pet. Exh. D. RVI's position was that it could only be required to sell to CCPA a railroad easement, and CCPA's "understanding" of a fee simple conveyance thus was actually a rejection of the terms and conditions we set in the January 2000 Decision.

We found that CCPA's understanding that encumbrances on the line would be limited to those of which it was aware prior to filing its OFA on November 8, 1999, was correct and that CCPA's acceptance was valid. See decision served on March 3, 2000 (March 2000 Decision), at 3. We rejected RVI's argument that "it may only be required to transfer to CCPA what real estate interests are necessary for CCPA to conduct rail operations, such as a rail easement." Id. Further, we agreed with CCPA that there should be no additional encumbrances on the property beyond those that it had accepted when it formulated its purchase offer. Id. at 4.

Shortly before the scheduled closing date, CCPA presented evidence of a transaction of which it was not previously aware, and that it had not considered in formulating its offer — a quitclaim deed, dated October 28, 1999, in which RVI purported to transfer in fee simple the subsurface and air rights of the right-of-way to its affiliate, Venture Properties of Boardman

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[11](...continued)
offer and (upon request) provide service on a railroad line. The Board grants abandonment authority in one of two ways: (1) by granting an application under 49 U.S.C. 10903; or (2) by granting an exemption from the application process pursuant to 49 U.S.C. 10502. The exemption authority we granted to RVI did not take effect because of the OFA process.

(VPB). In a decision served on April 5, 2000 (April 2000 Decision), at 1, we explained that under our regulations and an earlier order, we had required RVI to provide to CCPA "any information bearing on the nature of RVI's title to the right-of-way," so that CCPA could formulate its offer. That transfer of information occurred on October 8, 1999 — about three weeks before the newly discovered quitclaim deed was signed. Therefore, CCPA was unaware of the transfer when it formulated its offer, and the Board was not aware of it when it set the purchase price. The Board recognized that the transfer of these subsurface and aerial rights could affect the value of the land and consequently the purchase price that we had set in the January 2000 Decision. To remedy the situation, we ordered RVI to "show cause why the transfer of the subsurface and air rights after October 8, 1999, is not voidable." April 2000 Decision at 2.

The show cause order resulted in the October 2000 Decision that is the subject of RVI's stay request. In it, we declared void RVI's "sales or transfers of property interests in this rail line," with the exception of the encumbrances of which CCPA had been aware in formulating its initial offer. October 2000 Decision at 20. Further, we required that RVI record the October 2000 Decision in the land records of the counties in which the voided transfers earlier were recorded. Id. We explained that RVI's recent attempted transfers to VPB and other parties were a "blatant effort to strip away as much of the property as possible to avoid including those portions of the property in the sale" under section 10904, and that consequently the transfers contravened our continuing and exclusive regulatory jurisdiction over the rail line prior to its abandonment. Id. at 11. We provided that the October 2000 Decision would be effective on November 3, 2000, and set the closing of the sale no later than November 17, 2000 (within 45 days from the date of issuance). Id. at 21.

RVI now seeks an order vacating the postponement of the abandonment exemption. Such an order, it anticipates, would retroactively authorize the consummation of the abandonment and thereby void the ordered sale of the line to CCPA. In its stay petition, RVI also requests us to direct the parties to hold proceeds from the closing in escrow until completion of all administrative and judicial review proceedings. Petition at 1, 8.

DISCUSSION AND CONCLUSIONS

I. Motion For Order Vacating Postponement Of Abandonment Exemption.

RVI posits that CCPA had an obligation to notify us, within 10 days of the issuance of the October 2000 Decision, whether it accepted or rejected the revised terms of sale that we set in that decision. On the premise that CCPA did not provide that notice, RVI contends that the earlier postponement of its abandonment exemption must be vacated.

We reject RVI's argument because we did not require CCPA to file a formal acceptance of the modification of the terms and conditions of sale in the October 2000 Decision. Nor do the statutory provisions regarding OFAs require a notice of acceptance. Rather, they require only that an offeror who wants to withdraw its offer must provide notice of withdrawal within 10 days

of issuance of our decision setting the terms and conditions. See 49 U.S.C. 10904(f)(2).

RVI's argument for an order vacating postponement reduces to a purported failure of CCPA to meet a regulatory requirement, at 49 CFR 1152.27(h)(7), that an offeror provide notice in either event: withdrawal or acceptance of the terms and conditions. But CCPA had already provided the required notice when we initially set the terms and conditions of sale. See January 2000 Decision at 11, ¶ 4 (requiring CCPA to notify the Board and RVI whether it accepted or rejected) and Pet. Exh. D (CCPA notice accepting the terms). We did not require another specific notice when we revised certain terms in the October 2000 Decision. Therefore, CCPA complied with this regulation.

In any event, RVI's argument fails because CCPA has formally notified us that it accepts the modified terms and conditions of sale. See CCPA October 20, 2000 Letter of Keith O'Brien.[12] Thus, there is no question of CCPA's acceptance of the modified terms and there is no basis to vacate the November 1999 Decision that postponed the effectiveness of the abandonment exemption to permit the OFA process to go forward. That process is now at its end because, under the terms of the October 2000 Decision, the closing of the sale will occur no later than November 17, 2000. For these reasons, we will deny the motion to vacate the postponement of the abandonment exemption.

II. Petition For Stay Pending Judicial Review.

The standards governing a stay request are: (1) whether petitioner is likely to prevail on the merits of the appeal; (2) whether petitioner will be irreparably harmed absent a stay; (3) whether grant of a stay would substantially harm others; and (4) the public interest in granting a stay. Michigan Coalition of Radioactive Material Users, Inc., v. Griepentrog, 945 F.2d 150 (6th Cir. 1991); Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

A. RVI Is Not Likely To Succeed On The Merits. RVI has not demonstrated that it is likely to prevail on the issues it raises concerning the merits of the Board's decision.

1. CCPA Fully Accepted The Terms And Conditions We Set. When it first indicated its acceptance of the terms of sale, CCPA stated that it expected to receive a generally unencumbered fee simple in the property. RVI argues, Petition at 10-11, that because we have no authority to order a carrier to convey an unencumbered fee simple, CCPA did not unconditionally accept the terms we set in the January 2000 Decision, and that consequently RVI's abandonment authority was automatically revived by operation of the statute. But RVI's argument is based on the mistaken notion that, under the OFA statute, the most we could order a seller to convey is a "surface easement for railroad purposes and the rail related equipment that is

[12] RVI responded to Mr. O'Brien's letter on October 24, 2000.

used in the provision of rail transportation services on the line."[13] That construction of our statute is incorrect. The terms we set, which CCPA accepted, required RVI to convey all of the interests it owned in this rail line, with the exception of certain easements and encumbrances (for which RVI had been paid and which we considered in setting the terms).

The fact that CCPA specified in its acceptance that it expected to get what it correctly thought the Board had ordered does not defeat the acceptance. Contrary to RVI's argument (Petition at 3), in Illinois Central Gulf R.R. Co. v. ICC, 717 F.2d 408 (7th Cir. 1983) (Illinois Central), the court did not hold that a potential purchaser's acceptance of the terms and conditions of sale established by the Board in an OFA proceeding must be absolute and unconditional. Rather, in Illinois Central, which interpreted a different OFA provision of the statute,[14] the court observed that "[b]ecause [the offeror's] acceptance was absolute, the ICC was under no statutory obligation to issue a certificate of abandonment immediately." 717 F.2d at 411. That is not the same as saying that the statute requires an "absolute, unconditioned acceptance." Indeed, in Illinois Central, the Seventh Circuit noted that even though the offeror had apparently "'conditioned' its acceptance of the terms and conditions of sale" on the outcome of an appeal of a related decision, the ICC specifically found that the acceptance of the terms was absolute. Id.

In any event, in this case, CCPA did fully accept the terms and conditions we set for acquisition of RVI's 35.7-mile line of railroad, using the precise language used by RVI to frame its abandonment petition. There is no doubt that CCPA has accepted the terms we set for sale of that railroad line.

RVI's argument that we have no authority to order conveyance of more than a rail easement would defeat the purpose of the OFA provisions. These provisions were enacted to address situations just like this one, in which the owner of a rail line is not really interested in serving the customers on the line. Congress made a determination that keeping rail lines in service is more important than using rail properties for private business purposes, and so it gave us the extraordinary authority to take the property away from the owner — for compensation — and to transfer it to someone willing to provide rail service.

Limiting our authority to requiring a seller to convey only a rail easement would permit a seller to subrogate the rail use of the line to the other uses of the property, and it could even defeat an OFA sale with an unduly restrictive interpretation of those property interests in the rail line that are needed to provide rail transportation services. Section 10904 speaks in terms of sales of rail lines, not easements over rail lines. Here, Congress gave the Board authority to

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[13] For brevity, we will refer to these interests as a "rail easement."

[14] The other OFA provision, concerning sale of lines for which rail carriers have not yet filed an application for abandonment, is codified at 49 U.S.C. 10907.

require the sale of the rail line, without encumbrances, and it gave only the purchaser the option to walk away from the terms set by the Board. Although in this case it is evident that RVI did not buy this rail line in order to provide rail service, under the OFA statute, there is a presumption that a purchaser needs all of the selling entity's property interests in the rail line to provide effective rail transportation service because that is the property the seller (or its predecessor) assembled for, and dedicated to, rail service.[15] Id. at 10.

RVI cites Iowa Terminal R.R. Co. v. ICC, 853 F.2d 965, 971 (D.C. Cir. 1988), Petition at 13, but that case does not support its argument. There, the selling railroad asked the court to find that the ICC erred in permitting the offeror under section 10904 to purchase a 10-acre parcel of land. In an argument similar to RVI's rail easement theory in this case, the selling railroad in Iowa Terminal argued that only 2 acres of land were necessary to operate a railroad because the remaining 8 acres had been "leased for many years to a third party for nonrail purposes." Id. at 971. The court rejected that argument, id., agreeing with the ICC's analysis that:

> Simply because the land may not have been used in the past for rail operations does not mean that the land cannot be deemed essential for the acquiring party's future effective transportation services. [Iowa Traction, the purchaser] indicated in its request to set terms that it needed to purchase the entire 10-acre parcel of land
> . . . to conduct operations and to allow for expansion of the shop when a second car storage building was necessary.

The court went on to explain that, "[w]hile the land has not been used for rail operations in the past, we will not challenge the ICC's expert determination that the continued availability of the land is required to assure the effective operation of the [rail line] in the future." Id.

In this case, in our judgment, CCPA needed to ensure that it obtained all of RVI's property interests in this rail line (except for excluded easements accounted for in the price) so that it could provide for safe and effective rail transportation service. Iowa Terminal does not undercut our general authority to order conveyance of rail lines or our determination in this case that an easement would not do.

2. We Considered All Credible Evidence Of A Non-Rail Corridor Use Of This Rail Line. RVI contends that, in setting a price, we "ignored substantial evidence of non-rail corridor use of this right-of-way." Petition at 13. The contention simply is not true. Where there was convincing evidence of the value of any portion of this rail line for a non-rail use as an assembled corridor, we gave it credence and set the real estate value accordingly. For example,

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[15] An offeror may opt, however, to buy less than the full length of a rail line where the offeror wishes to provide for continued rail transportation service on only a portion of the line. October 2000 Decision at 9.

as RVI concedes concerning 4.2 miles of the right-of-way (comprising approximately 21 acres), Petition at 13, we fully credited RVI's contract to sell Boardman Township Park District an easement for non-rail use as a hiking trail, and set the real estate value accordingly. October 2000 Decision at 16-17.

As for all the other interests that RVI owned in this rail line, we found that RVI had not presented credible evidence, in the form of a signed sale agreement or a firm offer to purchase, of the value of the real estate as an assembled corridor for non-rail purposes. October 2000 Decision at 17.

RVI asks us to believe a fiction, that the one piece of credible evidence of the value for an assembled corridor in a particular segment should be extrapolated to show the value of the real estate interests underlying the rest of the rail line. The fact that a specific 4.2-mile stretch of the right-of-way was worth $600,000 for a hiking trail does not mean that there is a similar value to all of the other miles in the rail line. In a binding contract, Boardman Township Park District committed itself to purchase that 4.2-mile segment. We credited that agreement. There were no other similar, binding commitments to purchase portions of the rail line for trails on the remainder of the right-of-way, or for easements for any other purpose. October 2000 Decision at 15.

Contrary to RVI's contention (Petition at 14), we did not ignore evidence that Williams Communications has an interest in acquiring an easement along a portion of the rail line for installation of fiber optic cable. We found that the only evidence before us, an offer by RVI to sell such an easement, without any reciprocal acceptance of the offer by Williams, was not a credible basis to determine the value of the real estate in that portion of the assembled corridor. October 2000 Decision at 15. For all we know, Williams may have decided to place a fiber optic cable elsewhere, not on this rail line.

Likewise, contrary to RVI's assertion, we fully considered RVI's earlier sale of a non-exclusive aerial easement to Ohio Edison Company along a 11.7-mile stretch of the right-of-way. Petition at 13. As we explained, Ohio Edison had already paid RVI for that easement, and the property would continue to be subject to that easement. October 2000 Decision at 14-15. To again "count" that value in setting the purchase price would have been an improper double counting. Upon the sale of the line, CCPA will not be able to sell the exact same easement to Ohio Edison again. Therefore, we correctly did not consider the Ohio Edison sale in setting the value of the real estate for that stretch of the rail line, because there was no evidence of some other utility willing to purchase an easement along the exact same stretch, or any other segment of the rail line.

3. The Salvage Value We Set Is The Amount RVI Would Realize If The Line Were Abandoned. Finally, RVI attacks the Board's setting of the salvage value of the tracks and materials in the rail line as "arbitrary and punitive." Petition at 14. It points to a firm offer bid of $730,560 for salvage of the line, which we had accepted as fair market value in the purchase

price we set in the January 2000 Decision. However, in the October 2000 Decision at 18, based upon "newly-discovered evidence," we found that the salvage value of the tracks and materials is $400,000 — the price that a corporation paid to RVI in 1996 for the future right to salvage the tracks and materials in the line.

RVI mistakenly contends that the $400,000 sale "has no relationship whatsoever to the fair market value of those assets for OFA purposes." Petition at 14. But section 10904 "requires . . . that the sales price be calculated on the basis of what the seller would have realized from the sale of the assets had the line in fact been abandoned." Iowa Terminal, 853 F.2d at 969. Here, if abandonment had occurred, RVI could not have resold the track and materials to a different company for any price, because it earlier had sold the future salvage rights for $400,000. Accordingly, under section 10904, $400,000 is the salvage value to RVI of the rail and track materials in this line, and we properly set the salvage value at that price.

B. RVI Will Not Suffer Irreparable Harm In The Absence Of A Stay. RVI contends that, absent a stay, it will be forced to convey its property without a guaranteed ability to retrieve it and with irremediable, adverse consequences even if it could retrieve the property. Petition at 15. Even assuming all of the premises for this contention — that RVI will prevail on judicial review, that upon remand from the court we will set a higher purchase price, and that CCPA will walk away from the higher price (Petition at 17-18) — the allegation of irreparable injury is unconvincing.

In that event, any improvements made on the rail line, whether made by CCPA or a third party, clearly would belong to RVI (although RVI has sold the salvage rights to another entity).[16] If CCPA walked away from the purchase terms we might set in the future, the section 10904 process will have ended, and RVI's abandonment authority could be carried out immediately (subject to other timely and bona fide offers to subsidize or purchase the line, of which there are none in this case). See 49 U.S.C. 10904(f)(2). Likewise, RVI would be free to sell the 4.2-mile segment to Boardman Township Park District for a hiking trail, and similarly could sell any other portions to other purchasers for non-rail uses. There would be no need for RVI to "retrieve" the property.[17]

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[16] Here, we are answering, but not accepting, RVI's premise that improvements to the rail and materials in this line could be viewed as "adverse" to it. It is possible that rail improvements could be a nuisance to RVI if it finally obtains the opportunity to tear up the rail property, but RVI promised that it sought authority to buy the line to provide continued rail service, and continued rail service could only be enhanced by reconstructed track.

[17] Having already sold the rights to salvage the rail and materials to Kovalchick Corporation, RVI may be in the unfortunate position of not being able to realize for itself the value of any improvements that CCPA might make. But that would not be a consequence of the

(continued...)

RVI is incorrect in its expressed concern (Petition at 17-18) that, if it at some point recovered the rail line, it would lose whatever property interests CCPA may have sold or leased after the closing of the OFA sale. We have postponed the effectiveness of the abandonment authorization. Our jurisdiction over abandonment of rail lines is exclusive and plenary, Kalo Brick, 430 U.S. at 325, and until judicial review of our decisions is completed, we have jurisdiction to require that CCPA (and any third party to whom it sold or leased a portion of its interests in this line) must reconvey to RVI all of the interests CCPA acquired under the section 10904 process. See, e.g., Busboom Grain Co., Inc. v. ICC, 830 F.2d 74, 76 (7th Cir. 1987) (in denying stay of a decision authorizing abandonment of a rail line, court recognized that a reviewing court's order finding the decision unlawful "restores the status quo ante"). The status quo ante in this case would be that RVI owns all of the property rights it had in this rail line, including the payments for interests sold or leased by CCPA. Should the need for it arise, this exercise of our jurisdiction would be comparable to our earlier action voiding RVI's transfers of portions of its property interests in the line to VPB and other third parties during the pendency of CCPA's OFA. The courts recognize that agencies inherently have such broad powers to protect the integrity of their processes. ICC v. American Trucking Ass'ns, 467 U.S. 354, 364-65 (1966).

C. A Stay Will Adversely Impact Other Interested Parties. A stay, or an escrow provision such as RVI has suggested, would prevent restoration of rail service during the pendency of court review. This result would be contrary to the overarching goal of the OFA provision of the statute — to allow the continuation of rail service for the benefit of the shippers who depend upon it. If a stay were granted, there would be a delay in making necessary repairs to the line. See October 2000 Decision at 19 (describing removal of track and damage in certain segments of the line while RVI owned it). In turn, the delay of repairs would harm the shippers by delaying the restoration of service.

D. The Public Interest Favors Denial Of A Stay. RVI claims (Petition at 22) that a stay is in the public interest because of the public policy to allow railroads to earn adequate revenues and redeploy less productive assets. Far from operating this line, however, RVI engaged in activities showing a "blatant disregard of its common carrier obligation to provide service." October 2000 Decision at 19. While this line was still an active rail line (albeit subject to a temporary embargo), RVI authorized state road crews to pave over portions, which clearly would prevent continued railroad operations. Id. Its disingenuous invocation of the need to maintain the financial integrity of railroads is unavailing.

RVI also invokes the public safety, contending that restoration of service on the rail line could block major highways and community emergency services along certain segments. Petition at 23. But this line was continuously active through November 1996, and no one has cited to emergencies of that sort in the past. Restoration of the line will not turn it into a major

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[17](...continued)
absence of a stay.

trunk line; it simply will return to serving local shippers who need the service. Moreover, CCPA will have the obligation to ensure the safety of all grade crossings.

Furthermore, RVI's argument about blocked highways and emergency vehicles is inconsistent with its position that there will not be sufficient rail traffic to warrant the resumption of rail service. While we expect that there is sufficient traffic to make a go of restoring service on the line, we do not expect a deluge of traffic that could possibly harm the citizens of the towns along this line.

In conclusion, RVI has not met the standards for issuing a stay pending judicial review. Denial of a stay is in the interest of the public and will not irreparably harm RVI.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. RVI's motion to vacate the postponement of the effective date of the abandonment exemption is denied.

2. RVI's petition for a stay is denied.

3. The request of CCPA and CCPR to exceed the page limitation is granted.

4. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary